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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
PHAM, HUNG Q

ART UNIT	PAPER NUMBER
2168	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/825,403	SHRUM ET AL.
	Examiner	Art Unit	
	HUNG Q. PHAM	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/09/05 & 02/02/06*.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

    4a) Of the above claim(s) *5-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 10-17* is/are rejected.

7)☒ Claim(s) *3 and 4* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date *02/02/06*.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

- A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/09/05, and the provided evidences under 37 CFR § 41.33 filed 09/27/05 have been entered.

- A copy of Hewlett-Packard Firehunter Concepts Guide, copyright 1998-1999, as requested by examiner in Office Action 01/20/2006 was provided. Examiner wishes to thank Applicants for providing this document.

Response to Arguments

- Applicant's arguments filed 05/10/2005 with respect to the rejection of claims 1 and 2 under 35 U.S.C. § 102 have been fully considered but they are not persuasive.

As argued by applicants at page 8:

> *It is respectfully submitted that <u>Concept Guide,</u> fails to disclose or suggest at least the claimed server being tiered based on e-commerce responsibilities, the claimed e-commerce installation, the claimed e-commerce transaction server, nor the claimed invention as a whole in the e-commerce installation, for example.*
>
> *In addition, as particularly detailed in <u>Concept Guide,</u> Concept Guide was **not designed to monitor e-commerce** as a process, as claimed.*
>
> *Therefore, for at least the above, it is respectfully requested that this rejection be withdrawn and claims 1 and 2 be allowed. For at least similar rationale, it is respectfully submitted that claims depending from claims 1 and 2 are equally in proper condition for allowance.*

Examiner respectfully disagrees.

Applicants provided a plurality of slight different definitions of e-commerce at page 7

(lines 21-29):

> ... *available definitions for e-commerce include: "Electric commerce: the conducting of business communication and transactions over networks and through computers. Specifically, ecommerce is the buying and selling of goods and services... ", "The process of selling products or services via the Web;"...*

In short, with the broadest definition, e-commerce is the process of conducting services

or selling products via the Web.

Firehunter is a multi-platform Service Management solution that enables Internet Service

Providers and Enterprise/IT providers to deliver managed, value-added services and monitors

quality for the internetworking services (page ii, Welcome to Firehunter). As disclosed in HP

Firehunter at page 2-2, Firehunter represents each Internet service in the Service Model as a

tree structure. At the root is the service itself, followed by the servers, which implement the

service. Each of these servers in turn is composed of the supporting service elements,

consisting of application software such as Post Office Protocol/POP3, SMTP, operating system

and network interfaces, that support delivery of the services. As further disclosed at page 2-8,

FIG. 2-6, the Service Model tree is illustrated and represented in the Firehunter GUI application

as a tree structure, e.g., Mail Services, Network Service, News Service, Web Service, etc.

As seen, the Firehunter manages services for Internet Service Providers and

Enterprise/IT providers, which provide and conduct services, e.g., e-mail, web services... over

the Internet. In different word, an Internet Service Provider or an Enterprise/IT provider is *an e-commerce installation*. The Service Model for monitoring *e-commerce installation*, e.g., an Internet

Service Provider or an Enterprise/IT provider, indicates *e-commerce installation* includes *a plurality of servers that organized into a plurality of tiers*, e.g., Mail Services, Network Service, News Service, Web

Service, etc., *each tier having a different e-commerce responsibility*, e.g., Mail Services is responsible e-mail transaction service or *e-commerce transaction server* (page 3-5), Network Service is responsible for a communication service (page 3-14)...

Thus, the Firehunter disclosed *the claimed server being tiered based on e-commerce responsibilities, the claimed e-commerce installation, the claimed e-commerce transaction server* as recited.

In light of the foregoing arguments, the rejection of claims 1 and 2 under 35 U.S.C. § 102 is hereby sustained.

• Applicant's arguments with respect to claims 10-17 under 35 U.S.C. § 103 have been considered but are moot in view of the new ground(s) of rejection.

• The provided evidences under 37 CFR § 41.33 filed 09/27/05 have been considered. The provided evidences do not relate to the "Firehunter/L 3.0" reference that was used in the Final Office Action 03/10/05. However, because the copyright date of "Firehunter/L 3.0" cannot be used to determine whether the "Firehunter/L 3.0" predates the priority date of the application (the copyright of "Firehunter/L 3.0" is "1994-2000", and the application claimed benefit of a provisional application filed 04/28/2000). Therefore, the "Firehunter/L 3.0" will not be used as a reference under 102.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 02/02/06 was filed after the mailing date of the first Office Action. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Duplicate Claims, Warning

Applicant is advised that should claim 14 be found allowable, claim 1 will be objected to

under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application

are duplicates or else are so close in content that they both cover the same thing, despite a

slight difference in wording, it is proper after allowing one claim to object to the other as being a

substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public
> use or on sale in this country, more than one year prior to the date of application for patent in the United
> States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by

Hewlett-Packard [HP Firehunter Internet Service Management Solutions Concepts

Guide].

Regarding claims 1 and 14, Hewlett-Packard Firehunter Concepts Guide discloses *a*

method for monitoring an e-commerce installation, the e-commerce installation having a plurality of servers

organized into a plurality of tiers, each tier having a different e-commerce responsibility (Firehunter is a

multi-platform Service Management solution that enables Internet Service Providers and

Enterprise/IT providers to deliver managed, value-added services and monitors quality for the

internetworking services (page ii, Welcome to Firehunter). As disclosed in HP Firehunter at

page 2-2, Firehunter represents each Internet service in the Service Model as a tree structure.

At the root is the service itself, followed by the servers, which implement the service. Each of

these servers in turn is composed of the supporting service elements, consisting of application

software such as Post Office Protocol/POP3, SMTP, operating system and network interfaces,

that support delivery of the services. As further disclosed at page 2-8, FIG. 2-6, the Service

Model tree is illustrated and represented in the Firehunter GUI application as a tree structure,

e.g., Mail Services, Network Service, News Service, Web Service, etc. As seen, the Firehunter

manages services for Internet Service Providers and Enterprise/IT providers, which provide and

conduct services, e.g., e-mail, web services... over the Internet. In different word, an Internet

Service Provider or an Enterprise/IT provider is *an e-commerce installation*. The Service Model for

monitoring *e-commerce installation*, e.g., an Internet Service Provider or an Enterprise/IT provider,

indicates *e-commerce installation* includes *a plurality of servers that organized into a plurality of tiers*, e.g.,

Mail Services, Network Service, News Service, Web Service, etc., *each tier having a different e-*

commerce responsibility, e.g., Mail Services is responsible e-mail transaction service (page 3-5),

Network Service is responsible for a communication service (page 3-14)), *the servers of each tier*

generating log files and maintaining databases (page 2-9 (first paragraph) and from page 4-7 to 4-15).

The method comprising:

>*installing a plurality of software agents onto the plurality of servers, respectively* (Agents and

Scalability, pages 1-11 and 1-12),

>*wherein each of the plurality of software agents retrieves at least one of the log files from an associated*

server (page 1-11, Agents);

The right hand pane of FIG. 2-2 indicates the step of *graphically presenting the measurements*,

and implies the step of *reading the retrieved log files and querying the databases to obtain information stored*

therein, the information comprising performance measurements of the installation (availability graph of FIG.

2-2 corresponds to availability test as in pages 3-3, 3-4, the availability log file as in FIG. 2-1 is

retrieved and read to include in the test, other performance measurement are queried for the

test).

Regarding claim 2, Hewlett-Packard discloses *a method for monitoring an e-commerce*

installation, the e-commerce installation having a plurality of servers generating log files and maintaining

databases (Firehunter is a multi-platform Service Management solution that enables Internet

Service Providers and Enterprise/IT providers to deliver managed, value-added services and

monitors quality for the internetworking services (page ii, Welcome to Firehunter). As disclosed

in HP Firehunter at page 2-2, Firehunter represents each Internet service in the Service Model

as a tree structure. At the root is the service itself, followed by the servers, which implement the

service. Each of these servers in turn is composed of the supporting service elements,

consisting of application software such as Post Office Protocol/POP3, SMTP, operating system

and network interfaces, that support delivery of the services. As further disclosed at page 2-8,

FIG. 2-6, the Service Model tree is illustrated and represented in the Firehunter GUI application

as a tree structure, e.g., Mail Services, Network Service, News Service, Web Service, etc. As

seen, the Firehunter manages services for Internet Service Providers and Enterprise/IT

providers, which provide and conduct services, e.g., e-mail, web services... over the Internet. In

different word, an Internet Service Provider or an Enterprise/IT provider is *an e-commerce*

installation. The Service Model for monitoring *e-commerce installation*, e.g., an Internet Service

Provider or an Enterprise/IT provider, indicates *e-commerce installation* includes *a plurality of servers*,

e.g., Mail Services, Network Service, News Service, Web Service, etc. The claimed limitation

generating log files and maintaining databases by server is disclosed at page 2-9 (first paragraph) and

from page 4-7 to 4-15). The method comprising:

organizing the plurality of servers into at least a web server tier, a session server tier, a transaction

server tier, and a database server tier (As in FIG. FIG. 2-6, a plurality of servers is organized into Web

Service as *web server tier*, Network Service as *session server tier*, Mail Service as *transaction server tier*, and News Service as *database server tier*);

installing a plurality of software agents onto the plurality of servers, respectively (Agents and Scalability, pages 1-11 and 1-12),

wherein each of the plurality of software agents retrieves at least one of the log files from an associated server (page 1-11, Agents);

The right hand pane of FIG. 2-2 indicates the step of *graphically presenting the measurements*, and implies the step of *reading the retrieved log files and querying the databases to obtain information stored therein, the information comprising performance measurements of the installation* (availability graph of FIG. 2-2 corresponds to availability test as in pages 3-3, 3-4, the availability log file as in FIG. 2-1 is retrieved and read to include in the test, other performance measurement are queried for the test).

Regarding claim 16, Hewlett-Packard teaches all of the claimed subject matter as discussed above with respect to claim 1, Hewlett-Packard further discloses *the performance measurements are business performance measurements* (FIG. 2-2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Hewlett-Packard [HP Firehunter Internet Service Management Solutions Concepts Guide]

in view of Wolfberg et al. [5,210,687].

Regarding claim 10, Hewlett-Packard discloses *a method of operating a computer system to test*

and monitor an e-commerce installation comprising a web server, a session server, a transaction server, and a

database server, each having separate e-commerce responsibilities (Firehunter is a multi-platform Service

Management solution that enables Internet Service Providers and Enterprise/IT providers to

deliver managed, value-added services and monitors quality for the internetworking services

(page ii, Welcome to Firehunter). As disclosed in HP Firehunter at page 2-2, Firehunter

represents each Internet service in the Service Model as a tree structure. At the root is the

service itself, followed by the servers, which implement the service. Each of these servers in

turn is composed of the supporting service elements, consisting of application software such as

Post Office Protocol/POP3, SMTP, operating system and network interfaces, that support

delivery of the services. As further disclosed at page 2-8, FIG. 2-6, the Service Model tree is

illustrated and represented in the Firehunter GUI application as a tree structure, e.g., Mail

Services, Network Service, News Service, Web Service, etc. As seen, the Firehunter manages

services for Internet Service Providers and Enterprise/IT providers, which provide and conduct

services, e.g., e-mail, web services... over the Internet. In different word, an Internet Service

Provider or an Enterprise/IT provider is *an e-commerce installation*. The Service Model for

monitoring *e-commerce installation*, e.g., an Internet Service Provider or an Enterprise/IT provider,

indicates *e-commerce installation* includes *a plurality of servers*, e.g., Web Service as *web server*,

Network Service as *session server*, Mail Service as *transaction server*, and News Service as *database*

server, each having separate e-commerce responsibility, e.g., Mail Services is responsible e-mail

transaction service (page 3-5), Network Service is responsible for a communication service

(page 3-14)). The method comprising:

>*performing user transaction tests and reporting user transaction test results* (Adding Measurements

and Tests, pages 3-19 and 3-20);

>*measuring system performance data for each of the web server, the session server, the transaction*

server, and the database server (page 3-3 to 3-15).

The missing of Hewlett-Packard is the claimed limitation *measuring business performance*

data comprising monetary volume transacted by the e-commerce installation during a time period is included in

measuring business performance data.

Wolfberg disclosed a data processing system, which monitors client's business, orders

over time (Wolfberg, Abstract), and further disclosed *measuring business performance data comprising*

monetary volume transacted by the e-commerce installation during a time period (Wolfberg, Col. 3, Lines

57-61-64).

It would have been obvious for one of ordinary skill in the art at the time the invention

was made to include monetary volume in measurement data. By including monetary volume in

measurement data, transaction in a banking system is monitored to create transaction report

during a time period.

Regarding claim 11, Hewlett-Packard and Wolfberg, in combination, teach all of the

claimed subject matter as discussed above with respect to claim 10, Wolfberg further discloses

financial data transacted by the e-commerce installation during a time period (Wolfberg, Col. 3, Lines 57-

61-64).

Regarding claim 12, Hewlett-Packard and Wolfberg, in combination, teach all of the

claimed subject matter as discussed above with respect to claim 10, Hewlett-Packard further

discloses the step of *processing the system performance data to generate system graphics illustrating system*

performance measured against system performance baselines and system performance thresholds (Hewlett-

Packard, pages 4-7 to 4-10, and FIG. 2-2).

Regarding claim 13, Hewlett-Packard and Wolfberg, in combination, teach all of the

claimed subject matter as discussed above with respect to claim 10, Hewlett-Packard further

discloses the steps of *collecting the system performance data from the e-commerce installation; and*

transferring the system performance data to the computer system (Adding Measurements and Tests,

pages 3-19 and 3-20). Wolfberg disclosed a data processing system, which monitors client's

business, orders over time (Wolfberg, Abstract), and further disclosed *measuring business*

performance data (Wolfberg, Col. 3, Lines 57-61-64). It would have been obvious for one of

ordinary skill in the art at the time the invention was made to include business measurement

data. By including business measurement data, transaction is monitored to create transaction

report during a time period.

Regarding claim 15, Hewlett-Packard teaches all of the claimed subject matter as

discussed above with respect to claim 14. The missing of Hewlett-Packard is *financial performance*

measurements is included in the business performance measurements. Wolfberg disclosed a data processing system, which monitors client's business, orders over time (Wolfberg, Abstract), and further disclosed *financial performance measurements* (Wolfberg, Col. 3, Lines 57-61-64). It would have been obvious for one of ordinary skill in the art at the time the invention was made to include financial measurement data in to system performance data. By including financial performance measurements, transaction in a banking system is monitored to create transaction report during a time period.

Regarding claim 17, Hewlett-Packard teaches all of the claimed subject matter as discussed above with respect to claim 16. The missing of Hewlett-Packard is *financial performance measurements* is included in the business performance measurements. Wolfberg disclosed a data processing system, which monitors client's business, orders over time (Wolfberg, Abstract), and further disclosed *financial performance measurements* (Wolfberg, Col. 3, Lines 57-61-64). It would have been obvious for one of ordinary skill in the art at the time the invention was made to include financial measurement data in to system performance data. By including financial performance measurements, transaction in a banking system is monitored to create transaction report during a time period.

Allowable Subject Matter

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding to claims 3 and 4, Hewlett-Packard fail to suggest or disclose *the web servers tier comprises a plurality of web servers with each of said the plurality of web servers generating log files, said the log files comprising hit rate data, hosts served data, data volume data, error rates data, log file size monitor data, system load data, and generic data, said the session servers tier comprises a plurality of session servers with each of said the plurality of session servers generating a plurality of log files, said the plurality of log files comprising users served data, restarts data, IM status data, IM load data, database connectivity data, error rates data and system load data, said the transaction servers tier comprises a plurality of transaction servers with each of said the plurality of transaction servers generating a plurality of log files and a plurality of databases, said the log files comprising open and discarded cart rates data, shoppers in store data, authorized, cancelled, declined data, payment service errors data, inventory status data, and system load data, and said the databases comprising sales per hour data, items sold per hour data, new order rates data, processed order rates data, fulfilled order rates data shipping network connectivity data, orders awaiting authorization data, and orders awaiting shipment data; and said the database servers tier comprises a plurality of database servers with each of said the plurality of database servers generating a plurality of databases, said the plurality of databases comprising database access performance data, database size monitor data, database connectivity error rate data, and system load data.*

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TIM T. VO can be reached on 571-272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HUNG Q PHAM
Examiner
Art Unit 2168

June 21, 2006